

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	WT Docket No. 13-85
)	
CHOCTAW HOLDINGS, LLC)	EB Docket No. 11-71
Applications to Modify and to Partially)	
Assign License for Station WQGF 316)	
to Enbridge Energy Company)	FCC File Nos. 0004430505,
and Dixie Electric Membership)	0004507921, and 0006967374
Corporation, Inc.; and Call Sign WQGF 315)	
To Rappahannock Electric Cooperative)	

To: Marlene H. Dortch, Secretary

**JOINT OPPOSITION OF
ENBRIDGE ENERGY COMPANY, INC.
DIXIE ELECTRIC MEMEBERSHIP CORPORATION, INC.
AND
RAPPAHANNOCK ELECTRIC COOPERATIVE**

Enbridge Energy Company, Inc. (“Enbridge”); Dixie Electric Membership Corporation, Inc. (“DEMCO”); and Rappahannock Electric Cooperative (“Rappahannock”) (jointly “Critical Infrastructure Parties”) by their attorneys and pursuant to Section 1.939 (f) of the Commission’s Rules, 47 C.F.R. §1.939(f), hereby file this Opposition to the “Petition to Deny” (“Petition”) filed by Warren Havens (“Havens”) and Polaris PNT PBC (“Polaris”) (jointly the “Havens Parties”) in the above-captioned proceeding.¹ The Commission should expeditiously dismiss or deny the Petition and grant the subject partitioned applications.

Enbridge is an indirect wholly-owned subsidiary of Enbridge Inc. Enbridge Inc. indirectly owns and operates natural gas gathering, treating processing and transmission systems as well as marketing and trucking operations throughout Oklahoma, Texas,

¹ *Petition to Deny or in the Alternative Petition for Relief Under Sections 1.41, 1.2 and Other Rules*, WT Docket No. 13-85 and ET Docket No. 11-72, filed Aug. 16, 2017.

Louisiana, Mississippi and Alabama. DEMCO is the largest electric cooperative in the State of Louisiana, currently serving 102,000 members in southeastern parishes of the State. Rappahannock is a member-owned utility that provides electric service to more than 155,000 connections in parts of 22 Virginia counties. The Critical Infrastructure Parties are innocent parties in a proceeding that for many years has held hostage spectrum that is vital to their interests and to the public they serve.

They should no longer be subject to the abusive delaying tactics of Havens. The public interest demands finality. The Petition before the Commission is procedurally defective, lacks merit and should be swiftly rejected.

The Havens Parties Lack Standing To Challenge The Assignment Applications

In a well-reasoned decision, the Wireless Telecommunications Bureau ruled that neither Havens nor his company, Polaris, have standing to challenge the subject geographical licenses, which are now held by Choctaw, and serve as the underlying licenses for the partitioned assignments to the Critical Infrastructure Parties now under consideration by the Commission.² The Havens Parties present no new relevant evidence to reverse this lack of standing but repeat the same failed arguments that fall far short of demonstrating a cognizable legal interest.

Under Section 309 (d)(1) of the Communications Act, 47 U.S.C. § 309(d)(1), every petition to deny an application “shall contain specific allegations of fact sufficient to show that

² *In the Matter of Maritime Communications/Land Mobile LLC Debtor-in-Possession, Applications to Renew the Licenses for AMTS Stations WQGF315, WQGF316, WQGF317, WQGF318, Request for Extension and/or Waiver of AMTS Geographic License Performance Deadline, Application to Assign Licenses to Choctaw Holdings, LLC, FCC File Nos. 0007603776-79, FCC File No. 0005552500, Order, DA 17-450 (WTB, rel. May 11, 2017) (Maritime Renewal Order), recon. pending.*

the petitioner is a party in interest.”³ The Havens Parties fail to show a “causal link” between any alleged injury and grant of the assignments. There is no demonstration of any competitive harm. Commission records show that neither Havens nor Polaris are licensees before the Commission.⁴ Havens claim of a potential injury stemming from an equitable interest in licenses held by companies no longer under his control but now in the hands of a Receiver is far too removed to gain standing as a party-in-interest.⁵

“To establish standing, a petitioner must allege facts sufficient to demonstrate that grant of the application would cause it to suffer a *direct* injury.”⁶ An injury must be “concrete and particularized.” It cannot be merely “conjectural or hypothetical.”⁷ The Havens Parties speculative claims of potential indirect harm stemming from grant of the assignments clearly fail to meet the necessary burden to establish standing.⁸

³ See *Cellco Partnership d/b/a Verizon Wireless, Coral Wireless, LLC, and Coral Wireless Licenses, LLC*, Order, 29 FCC Rcd 13397, 13400, para. 8 (WTB MD 2014).

⁴ See also *Maritime Renewal Order*, at para. 10.

⁵ In the absence of statutory authority “a shareholder has no standing to bring an action in its own name and on its own behalf for an injury sustained by the corporation.” 5 BLUMBERG ON CORPORATE GROUPS § 167.03 at 21 (2d ed. 2015). This same basic principle of separation applies to a member’s interest in an LLC. See e.g. *Weddell v. H2O Inc.*, 271 P.3d 743, 748 (Nev. 2012).

⁶ *Maritime Renewal Order*, at para. 8 (emphasis added).

⁷ *Id.* at para. 8 (citations omitted).

⁸ The Commission should also decline to consider the Petition under Section 1.41 of the Rules, 47 C.F.R. §1.41. The underlying purpose of Section 1.41 is to open “an avenue of recourse to parties who might otherwise have none.” The Commission regularly declines to consider “informal” requests for action under Section 1.41, whereas here, formal procedures are available. *Maritime Renewal Order* at n. 41, citing *Warren C. Havens*, Memorandum Opinion and Order, 28 FCC Rcd 16261, 16267-68, para. 18 (2013).

The Commission Should Not Tolerate Any Further Abuse Of Its Process By Havens

The application issues raised by the Havens Parties are without any decisional significance and, if needed, can be addressed by ministerial action of the Commission. The Petition, which is devoid of any merit, is the latest abuse of the Commission's process by Havens in a long and well documented history of disruptive actions in Commission proceedings.⁹ Indeed, as a result of "contemptuous and disruptive conduct" Havens, and his companies, Environmental LLC and Verde Systems LLC, were removed from the Hearing proceeding involving the geographic licenses now before the Commission.¹⁰

The Removal Order documented that Havens "carried out a pattern of harassment of the Presiding Judge and his advisory staff."¹¹ The Judge found Havens' conduct "consistently contumacious and disrespectful" and that he "cavalierly refuses to even acknowledge rulings."¹² Citing a string of serious abusive conduct, the Removal Order found "Havens' shows crude

⁹ Havens has been warned repeatedly by the Commission for his abusive tactics. *See, e.g., Warren C. Havens*, Memorandum Opinion and Order, 27 FCC Rcd. 2756, 2757 (rel. Mar. 12, 2012) (finding that Havens abused the Commission's processes by filing frivolous and repetitive pleadings and requiring him to obtain the prior approval of the Wireless Telecommunications Bureau before filing further pleadings.) *See also, Warren C. Havens*, Memorandum Opinion and Order, FCC 12-1376 (rel. Aug. 21, 2012) (dismissing Havens' Petition for Reconsideration because it raised duplicative arguments that had already been rejected by the Commission), and *Warren C. Havens* Memorandum Opinion and Order, FCC 14-148 (rel. Oct. 9, 2014) ("we expressly stated that Havens 'should not expect further administrative review of the sanction.'").

¹⁰ *MARITIME COMMUNICATIONS/LAND MOBILE, LLC, Participant in Auction No. 61 and Licensee of Various Authorizations in the Wireless Radio Services, Applicant for Modification of Various Authorizations in the Wireless Radio Services, For Commission Consent to the Assignment of Various Authorizations in the Wireless Radio Service, EB Docket No. 11-71, File No. EB-09-1H-1751, FRN: 0013587779, Application File Nos. 0004030479, 0004193028, 0004193328, 0004354053, 0004309872, 0004314903, 0004315013, 0004430505, 0004417199, 0004419431, 0004422320, 0004422329, 0004507921, and 0004604962*, Memorandum Opinion and Order, FCC 15M-14, at para. 3 (rel. April 22, 2015) ("Removal Order").

¹¹ *Id.* at ¶ 14.

¹² *Id.* at ¶ 17.

contempt for the Presiding Judge, Bureau counsel, the Commission, and the Commission's Rules and processes.”¹³ The Judge concluded that Havens conduct was “insulting to the Commission” and removed him from the proceeding¹⁴

Unfortunately, Havens disruptive actions and abuse of the Commission’s processes continue with the filing of the current Petition that he clearly lacks standing to file. The Commission should not and cannot allow Havens to continue to disrupt its licensing processes. There is a clear public interest in granting the partitioned assignment applications to the Critical Infrastructure Parties who have a vital need for the spectrum and the right to expect finality in this proceeding after years of abusive conduct by Havens.

Conclusion

In view of the foregoing, the Commission should expeditiously dismiss or deny the Petition and grant the partitioned assignment applications to the Critical Infrastructure Parties.

Respectfully submitted,

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August 28, 2017

¹³ *Id.*

¹⁴ *Id.* at ¶ 19.

CERTIFICATE OF SERVICE

I, Beverly Harding, hereby certify that on this 28th day of August, 2017, a copy of the foregoing Joint Opposition was filed with the Commission, served on the parties listed below via First Class U.S. Mail and a courtesy copy was provided via electronic mail.

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